IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 56 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

S DAVE & CO.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 56 of 1992
MR MANISH J SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 02/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the assessee, the following question of law has been referred to this Court under the provisions of Section 256 (1) of the Income Tax Act, 1961:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income of M/s. Dave Transport Co. was taxable in the hands of the assessee firm?"

2. Learned advocate Shri Manish Shah has appeared for the applicant - assessee and learned Senior Standing Counsel Shri Manish Bhatt has appeared for the respondent - revenue.

3. The learned advocates have fairly submitted that the question which has been referred to this Court in this reference has already been answered in ITR No.155 of 1988 on 5.9.2002 in the case of the assessee.

4. Looking to the aforestated admitted fact and when the question referred to this Court is identical, except that in the instant case the assessment year was 1977-78 while in ITR No.155 of 1988 it was in respect of the assessment year 1976-77, looking to the law laid down by this Court in the case of the assessee, in ITR No.155 of 1988, decided on 5.9.2002, we answer the question in the negative, that is, in favour of the assessee and against the revenue.

5. The refernce stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(A.M. Kapadia, J.)

(skaran)